

109TH CONGRESS
1ST SESSION

S. 455

To amend the Mutual Educational and Cultural Exchange Act of 1961 to facilitate United States openness to international students, scholars, scientists, and exchange visitors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2005

Mr. COLEMAN (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To amend the Mutual Educational and Cultural Exchange Act of 1961 to facilitate United States openness to international students, scholars, scientists, and exchange visitors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Competitive-
5 ness Through International Openness Now Act of 2005”
6 or as the “ACTION Act of 2005”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

1 (1) The United States has a strategic interest
2 in encouraging international students, scholars, sci-
3 entists, and exchange visitors to visit the United
4 States to study, collaborate in research, and to de-
5 velop personal relationships.

6 (2) Openness to international students, schol-
7 ars, scientists, and exchange visitors serves vital and
8 longstanding national foreign policy, educational,
9 and economic interests and the erosion of such open-
10 ness undermines the national security interests of
11 the United States.

12 (3) Educating successive generations of future
13 world leaders has long been a foundation of the
14 United States international influence and leadership.

15 (4) Open scientific exchange enables the United
16 States to benefit from the knowledge of the world's
17 top students and scientists and has been a critical
18 factor in maintaining the United States leadership
19 in science and technology.

20 (5) International students studying in the
21 United States and their families contribute nearly
22 \$13,000,000,000 to the United States economy each
23 year, making higher education a major service sector
24 export.

1 (6) The total number of applications submitted
2 by foreign applicants to graduate schools in the
3 United States for enrollment during the fall of 2004
4 declined 28 percent from the number of such appli-
5 cations submitted for enrollment during the fall of
6 2003.

7 (7) The total number of foreign students en-
8 rolled in graduate schools in the United States dur-
9 ing the fall of 2004 declined 6 percent from the
10 number of such enrollments during the fall of 2003.

11 (8) The number of foreign students enrolled in
12 schools in the United States during the 2003–2004
13 academic year decreased by 2.4 percent from the
14 number of such students the 2002–2003 academic
15 year, marking the first absolute decline in foreign
16 enrollments since the 1971–1972 academic year.

17 (9) The policies implemented by the United
18 States since September 11, 2001, and the public
19 perceptions they have engendered, have discouraged
20 many foreign students from studying in the United
21 States and have frustrated the efforts of many for-
22 eign scholars and exchange visitors from visiting the
23 United States.

24 (10) The United States must improve its stu-
25 dent, scholar, scientist, and exchange visitor screen-

1 ing process to protect against terrorists seeking to
2 harm the United States.

3 (11) The United States has seen a dramatic in-
4 crease in requests for Visa Mantis checks, checks de-
5 signed to protect against illegal transfers of sensitive
6 technology, from approximately 1,000 in fiscal year
7 2000 to approximately 18,500 in fiscal year 2004.

8 (12) Concerns related to the international stu-
9 dent monitoring system known as “SEVIS” have
10 also contributed to the decline in the number of for-
11 eign applicants to educational institutions in the
12 United States.

13 (13) Other countries have instituted aggressive
14 strategies for attracting foreign students, scholars,
15 and scientists, and have adjusted their policies to en-
16 courage and accommodate access to universities and
17 scientific exchange. One such country, Australia, has
18 increased enrollment by foreign students in edu-
19 cational institutions in Australia by more than 53
20 percent since 2001.

21 (14) The European Union has set forth a com-
22 prehensive strategy to be the “most competitive and
23 dynamic knowledge-based economy in the world” by
24 2010. Part of this strategy is aimed at enhancing
25 economic competitiveness by making the European

1 Union the most favorable destination for students,
2 scholars, and researchers from other regions of the
3 world.

4 (15) In order to maintain United States com-
5 petitiveness in the world economy, build vital rela-
6 tionships with future world leaders, and improve
7 popular perceptions of the United States overseas,
8 the United States requires a comprehensive strategy
9 for recruiting foreign students, scholars, scientists,
10 and exchange visitors.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) APPROPRIATE CONGRESSIONAL COMMIT-
14 TEES.—The term “appropriate congressional com-
15 mittees” means the Committee on Foreign Relations
16 of the Senate and the Committee on International
17 Relations of the House of Representatives.

18 (2) SEVIS.—The term “SEVIS” means the
19 program to collect information relating to non-
20 immigrant foreign students and other exchange pro-
21 gram participants required by the Illegal Immigra-
22 tion Reform and Immigrant Responsibility Act of
23 1996 (Division C of Public Law 104–208; 110 Stat.
24 3009–546).

1 **SEC. 4. AMENDMENT TO THE MUTUAL EDUCATIONAL AND**
 2 **CULTURAL EXCHANGE ACT OF 1961.**

3 The Mutual Education and Cultural Exchange Act
 4 of 1961 (22 U.S.C. 2451 et seq.) is amended by adding
 5 at the end the following:

6 **“SEC. 115. STRATEGIC PLAN FOR INTERNATIONAL EDU-**
 7 **CATIONAL EXCHANGE.**

8 “(a) REQUIREMENT FOR PLAN.—

9 “(1) IN GENERAL.—Not later than 180 days
 10 after the date of enactment of the ACTION Act of
 11 2005, the President, in consultation with institutions
 12 of higher education in the United States, organiza-
 13 tions that participate in international exchange pro-
 14 grams, and other appropriate groups, shall develop
 15 a strategic plan for enhancing the access of foreign
 16 students, scholars, scientists, and exchange visitors
 17 to the United States for study and exchange activi-
 18 ties.

19 “(2) CONTENT.—The strategic plan shall in-
 20 clude the following:

21 “(A) A marketing plan that utilizes the
 22 Internet and other media resources to promote
 23 and facilitate study in the United States by for-
 24 eign students.

25 “(B) A clear division of responsibility that
 26 eliminates duplication and promotes inter-agen-

1 cy cooperation with regard to the roles of the
2 Departments of State, Commerce, Education,
3 Homeland Security, and Energy in promoting
4 and facilitating access to the United States for
5 foreign students, scholars, scientists, and ex-
6 change visitors.

7 “(C) A mechanism for institutionalized co-
8 ordination of the efforts of Departments of
9 State, Commerce, Education, and Homeland
10 Security in facilitating access to the United
11 States for foreign students, scholars, scientists,
12 and exchange visitors.

13 “(D) A plan to utilize the educational ad-
14 vising centers of the Department of State that
15 are located in foreign countries to promote
16 study in the United States and to prescreen
17 visa applicants.

18 “(E) A description of the lines of authority
19 and responsibility for foreign students in the
20 Department of Commerce.

21 “(F) A description of the mandate related
22 to foreign student and scholar access to edu-
23 cational institutions in the United States for
24 the Department of Education.

1 “(G) Streamlined procedures within the
2 Department of Homeland Security related to
3 foreign students, scholars, scientists, and ex-
4 change visitors.

5 “(H) Streamlined procedures to facilitate
6 international scientific collaboration.

7 “(3) SUBMISSION TO CONGRESS.—Not later
8 than 180 days after the date of enactment of the
9 ACTION Act of 2005, the President shall submit
10 the strategic plan to the Committee on Foreign Re-
11 lations of the Senate and the Committee on Inter-
12 national Relations of the House of Representatives.

13 “(b) RECIPROCITY AGREEMENTS.—It is the sense of
14 Congress that the United States should negotiate reci-
15 procity agreements with foreign countries with the goal
16 of mutual agreement on extending the validity of student
17 and scholar visas to 4 years and permitting multiple entry
18 on student and scholar visas.

19 “(c) ANNUAL REPORT.—

20 “(1) REQUIREMENT.—The President, acting
21 through the Secretary of State, in consultation with
22 the Secretary of Education, Secretary of Commerce,
23 Secretary of Homeland Security, and Secretary of
24 Energy, shall submit to Congress an annual report
25 on the implementation of the strategic plan required

1 by subsection (a) and on any negotiations with for-
2 eign countries related to the reciprocity agreements
3 referred to in subsection (b).

4 “(2) CONTENT.—An annual report submitted
5 under this subsection shall include a description of
6 the following:

7 “(A) Measures undertaken to enhance ac-
8 cess to the United States by foreign students,
9 scholars, scientists, and exchange visitors and
10 to improve inter-agency coordination with re-
11 gard to foreign students, scholars, scientists,
12 and exchange visitors.

13 “(B) Measures taken to negotiate recip-
14 rocal agreements referred to in subsection (b).

15 “(C) The number of foreign students,
16 scholars, scientists, and exchange visitors who
17 applied for visas to enter the United States,
18 disaggregated by applicants’ fields of study or
19 expertise, the number of such visa applications
20 that are approved, the number of such visa ap-
21 plications that are denied, and the reasons for
22 such denials.

23 “(D) The average processing time for an
24 application for a visa submitted by a foreign
25 student, scholar, scientist, or exchange visitor.

1 “(E) The number of applications for a visa
 2 submitted by foreign students, scholars, sci-
 3 entists, or exchange visitors that require inter-
 4 agency review.

5 “(F) The number of applications for a visa
 6 submitted by foreign students, scholars, sci-
 7 entists, or exchange visitors that were approved
 8 after receipt of such applications in each of the
 9 following:

10 “(i) Less than 15 days.

11 “(ii) Between 15 and 30 days.

12 “(iii) Between 31 and 45 days.

13 “(iv) Between 46 and 60 days.

14 “(v) Between 61 and 90 days.

15 “(vi) More than 90 days.

16 “(3) SUBMISSION OF REPORT.—Not later than
 17 November 30 2005, and annually thereafter through
 18 2008, the President shall submit to Congress the re-
 19 port described in this subsection.”.

20 **SEC. 5. FAIRNESS IN THE SEVIS PROCESS.**

21 (a) REDUCED FEE FOR SHORT-TERM STUDY.—

22 (1) IN GENERAL.—Section 641(e)(4)(A) of the
 23 Illegal Immigration Reform and Immigrant Respon-
 24 sibility Act of 1996 (8 U.S.C. 1372(e)(4)(A)) is
 25 amended by striking the second sentence and insert-

1 ing “Except as provided in subsection (g)(2), the fee
 2 imposed on any individual may not exceed \$100, ex-
 3 cept that in the case of an alien admitted under sub-
 4 paragraph (J) of section 101(a)(15) of the Immigra-
 5 tion and Nationality Act (8 U.S.C. 1101(a)(15)) as
 6 an au pair, camp counselor, or participant in a sum-
 7 mer work travel program, the fee shall not exceed
 8 \$35 and that in the case of an alien admitted under
 9 subparagraph (F) of such section (8 U.S.C.
 10 1101(a)(15)(F)) for a program that will not exceed
 11 90 days, the fee shall not exceed \$35.”.

12 (2) TECHNICAL AMENDMENTS.—Such section is
 13 further amended—

14 (A) in the first sentence, by striking “At-
 15 torney General” and inserting “Secretary of
 16 Homeland Security”; and

17 (B) in the third sentence, by striking “At-
 18 torney General’s” and inserting “Secretary’s”.

19 (b) REPORT ON IMPROVING FEE COLLECTION.—Not
 20 later than 60 days after the date of enactment of this Act,
 21 the Secretary of Homeland Security and the Secretary of
 22 State shall jointly submit to the appropriate congressional
 23 committees a report on the feasibility of—

24 (1) entering data into the SEVIS database and
 25 collecting the fee required by section 641(e) of the

1 Illegal Immigration Reform and Immigrant Respon-
2 sibility Act of 1996 (8 U.S.C. 1372(e)) only after
3 the applicant’s visa has been approved; or

4 (2) refunding the fee required by such section
5 in the event that the applicant’s visa has been de-
6 nied.

7 **SEC. 6. REFORMING SEVIS DATABASE MANAGEMENT.**

8 (a) IN GENERAL.—The Secretary of Homeland Secu-
9 rity and the Secretary of State shall—

10 (1) develop policies that permit authorized rep-
11 resentatives of SEVIS-approved schools or programs
12 to make corrections to a student, scholar, or ex-
13 change visitor’s record directly within the SEVIS
14 database;

15 (2) in the case of such corrections that cannot
16 be made by such representatives, ensure that suffi-
17 cient resources are made available to enable such
18 corrections to be made in a timely manner;

19 (3) develop policies to prohibit the detention or
20 deportation of a student who is found to be out of
21 status as a result of a SEVIS database error; and

22 (4) review the regulations and technology used
23 in the SEVIS system, in order to streamline proc-
24 esses and reduce the time required for SEVIS-ap-

1 proved universities and programs to perform data
2 entry tasks.

3 (b) REPORT.—Not later than 180 days after the date
4 of enactment of this Act, the Secretary of Homeland Secu-
5 rity and the Secretary of State shall jointly submit to the
6 appropriate congressional committees a report on the im-
7 plementation of this section.

8 **SEC. 7. INTEROPERABLE DATA SYSTEMS.**

9 (a) RESPONSIBILITIES OF THE FBI DIRECTOR.—
10 The Director of the Federal Bureau of Investigation shall
11 take the steps necessary to ensure that the Federal Bu-
12 reau of Investigation has full connectivity to the Consular
13 Consolidated Database.

14 (b) REPORT.—Not later than 180 days after the date
15 of enactment of this Act, the Director of the Federal Bu-
16 reau of Investigation shall report to the Committee on the
17 Judiciary of the Senate and the Committee on the Judici-
18 ary of the House of Representatives on the Director’s
19 progress in ensuring that the Federal Bureau of Investiga-
20 tion has full connectivity to the Consular Consolidated
21 Database.

22 **SEC. 8. FACILITATING ACCESS.**

23 (a) FINDING.—Congress finds that improvements in
24 visa processing would enhance the national security of the
25 United States by—

1 (1) permitting closer scrutiny of visa applicants
2 who might pose threats to national security; and

3 (2) permitting the timely adjudication of visa
4 applications of those whose presence in the United
5 States serves important national interests.

6 (b) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that improvements in visa processing should in-
8 clude—

9 (1) an operational visa policy that articulates
10 the national interest of the United States in denying
11 entry to visitors who seek to harm the United States
12 and in opening entry to legitimate visitors, to guide
13 consular officers in achieving the appropriate bal-
14 ance;

15 (2) a greater focus by the visa system on visi-
16 tors who require special screening, while minimizing
17 delays for legitimate visitors;

18 (3) a timely, transparent, and predictable visa
19 process, through appropriate guidelines for inter-
20 agency review of visa applications; and

21 (4) a provision of the necessary resources to
22 fund a visa processing system that meets the re-
23 quirements of this Act.

24 (c) VISA PROCESSING.—

1 (1) IN GENERAL.—Not withstanding any other
2 provision of law, not later than 60 days after the
3 date of enactment of this Act, the Secretary of State
4 shall issue appropriate guidance to consular officers
5 in order to—

6 (A) give consulates appropriate discretion
7 to grant waivers of personal appearance for for-
8 eign students, scholars, scientists and exchange
9 visitors in order to minimize delays for legiti-
10 mate travelers while permitting more thorough
11 interviews of visa applicants in appropriate
12 cases;

13 (B) establish a presumption of visa ap-
14 proval for frequent visitors who have previously
15 been granted visas for the same purpose and
16 who have no status violations and for people
17 previously approved for visas who had to depart
18 the United States for family emergencies; and

19 (C) give appropriate discretion, according
20 to criteria developed at each post and approved
21 by the Secretary of State, to view as “rec-
22 reational in nature” courses of a duration no
23 more than 1 semester or its equivalent, and not
24 awarding certification, license or degree, for

1 purposes of determining appropriateness to vis-
2 itor status.

3 (2) TIMELINESS STANDARDS.—Not later than
4 60 days after the date of enactment of this Act, the
5 President shall publish final regulations for inter-
6 agency review of visa applications requiring security
7 clearances which establish the following standards
8 for timeliness for international student, scholar, sci-
9 entist, and exchange visitor visas that—

10 (A) establish a 15-day standard for re-
11 sponses to the Department of State by other
12 agencies involved in the clearance process;

13 (B) establish a 30-day standard for com-
14 pleting the entire inter-agency review and advis-
15 ing the consulate of the result of the review;

16 (C) provide for expedited processing of any
17 visa application with respect to which a review
18 is not completed within 30 days, and for advis-
19 ing the consulate of the delay and the estimated
20 processing time remaining; and

21 (D) establish a special review process to
22 resolve any cases whose resolution is still pend-
23 ing after 60 days.

24 (d) STANDARDS FOR VISA EVALUATIONS.—

1 (1) IN GENERAL.—Section 101(a)(15)(F)(i) of
 2 the Immigration and Nationality Act (8 U.S.C.
 3 1101(a)(15)(F)(i)) is amended—

4 (A) by striking “having a residence in a
 5 foreign country which he has no intention of
 6 abandoning” and inserting “having the inten-
 7 tion, capability, and sufficient financial re-
 8 sources to complete a course of study in the
 9 United States”; and

10 (B) by striking “and solely” after “tempo-
 11 rarily”.

12 (2) PRESUMPTION OF STATUS.—Section 214(b)
 13 of the Immigration and Nationality Act (8 U.S.C.
 14 1184(b)) is amended by striking “subparagraph (L)
 15 or” and inserting “subparagraph (F), (J), (L), or”.

16 (e) REPORT.—Not later than 180 days after the date
 17 of enactment of this Act, the Secretary of State shall re-
 18 port to appropriate congressional committees on—

19 (1) the feasibility of expediting visa processing
 20 for participants in official exchange programs, and
 21 for students, scholars, scientists and exchange visi-
 22 tors through prescreening of applicants by the gov-
 23 ernment or a university in the country in which the
 24 individual resides, a Department of State edu-

1 cational advising center located in a foreign country,
 2 or other appropriate entity;

3 (2) the feasibility of developing the capability to
 4 collect biometric data without requiring an applicant
 5 for a visa to appear in person at a United States
 6 mission in a foreign country; and

7 (3) the implementation of the guidance de-
 8 scribed in subsection (b), including the training of
 9 consular officers, and the effect of such guidance
 10 and training on visa processing volume and timeli-
 11 ness.

12 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated such sums
 14 as may be necessary to carry out to carry out this Act,
 15 including for the consular affairs and educational and cul-
 16 tural exchange functions of the Department of State, the
 17 visa application review and SEVIS database management
 18 function of the Department of Homeland Security, for the
 19 Departments of Education, Commerce, and State to de-
 20 velop an implement a marketing plan to attract inter-
 21 national students, scholars, scientists, and exchange visi-
 22 tors, and for database improvements in the Federal Bu-
 23 reau of Investigations as specified in section 7.

○